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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 11, 1991

Ms. Martha T. Williams
Staff Counsel
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77252-2562

OR91-275

Dear Ms. Williams:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12393.

We have considered the exception you claimed, specifically sections 3(a)(8) and 3(a)(11), and have reviewed the document at issue, a copy of a report on the Security Department of the Port of Houston Authority. You advise that the report was prepared by a member of the authority's staff for the purpose of providing advice, opinion and recommendation to the authority's governing body.

We turn first to section 3(a)(11), which protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Section 3(a)(11) was designed to protect advice and opinion on agency matters in order to encourage open and frank discussion in the deliberative process of governmental bodies. Section 3(a)(11), however, only excepts from disclosure advice, opinion and recommendation and not facts or written observations of fact. *See* Open Records Decision Nos. 538 (1990); 470 (1987). All of the portions that you have marked as excepted from disclosure under section 3(a)(11) contain only advice, opinion or recommendation for use in the agency's deliberative process and thus may be withheld pursuant to section 3(a)(11).

You also seek to withhold certain shift, hour and manpower information with regard to various terminal gates of the authority pursuant to section 3(a)(8). You advise that the information in issue is part of the internal records and notations of

the Port Security Department maintained for internal use in matters relating to law enforcement.

Section 3(a)(8) excepts from required disclosure

records of law enforcement agencies and prosecutors that deal with the detection, and investigation and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

In Attorney General Opinion JM-742 (1987), this office recognized that section 60.077 of the Texas Water Code clearly empowered the authority to employ peace officers to enforce the applicable provisions of the code as well as any ordinances, rules and regulations adopted by the authority. Section 60.077 provides in part that peace officers employed or appointed by the authority are authorized to make arrests, serve criminal warrants, subpoenas, or writs, and perform any other services or duties which may be performed by any other duly constituted peace officer. In light of the authority's statutory powers to employ or appoint peace officers for law enforcement purposes, the authority is a law enforcement agency for section 3(a)(8) purposes. Furthermore, the shift, hour and manpower information that you seek to withhold from disclosure satisfies the test applied in *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977), which requires that information withheld from disclosure pursuant to section 3(a)(8) be information whose release "would unduly interfere with law enforcement and crime prevention." Thus, you may withhold that information from disclosure pursuant to section 3(a)(8).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-275.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lb

Ref.: ID# 12393, 12574, 12616

Enclosures: Marked documents; Open Records Decision No. 538;
Attorney General Opinion JM-742

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